

Defendants Qualcomm Incorporated, Qualcomm Atheros, Inc., and Qualcomm Innovation Center Inc. (collectively, “Qualcomm”) and Texas Instruments Incorporated file this notice of status update regarding *inter partes* review petitions and reexaminations. Qualcomm filed or joined the following *inter partes* review (“IPR”) petitions: IPR2015-00314, IPR2015-00315, IPR2015-00316 (challenging the ’624 patent); IPR2015-00531 (challenging the ’643 patent); IPR2016-00620 and IPR2016-00623 (challenging the ’500 patent). In addition, the following *ex parte* reexamination proceedings are pending: 95/000,647 (challenging the ’614 patent) and 95/000,648 (challenging the ’418 patent).

IPR2015-00314, IPR2015-00315, IPR2015-00316 (challenging the '624 patent)

The PTAB issued final written decisions on September 7, 2016 holding that claims 1, 2, 4-6, 8-10, 12-14, 16-18, 20-22, 24-26, 28, and 29 are unpatentable, and claims 3, 7, 11, 15, 19, 23, and 27 were not proven unpatentable. Ex. A at 3; Ex. B at 3; Ex. C at 3. Bandspeed no longer asserts claims 7 and 19 against Defendants. *See* Case No. 1:14-cv-00436, Dkt. No. 82 at 1 n.2. Bandspeed's deadline to file a notice of appeal is November 7, 2016. *See* 35 U.S.C. § 142. If Bandspeed does not appeal the PTAB's final written decision, construction of the following disputed claim terms will be unnecessary, because the claims in which the terms are found have been invalidated:

- “means for causing the first set of two or more communications channels to be used for communications between a pair of participants” (claim 5);
- “means for causing the second set of two or more communications channels to be used for communications between the pair of participants” (claim 5);
- “means for the first participant to communicate with a third participant over the default set of two or more communications channels while communicating with the second participant over the first set of two or more communications channels and while communicating with the second participant over the second set of two or more communications channels” (claim 5); and
- “the hopping sequence” (claim 14).

IPR2015-00531 (challenging the '643 patent)

The Patent Trial and Appeal Board (“PTAB”) issued a final written decision on August 5, 2016 holding that claims 1-4, 6-9, and 11-14 are unpatentable, and claims 5, 10, and 15 were not proven unpatentable. Ex. D at 3. Bandspeed no longer asserts claims 5, 10, and 15 against

Defendants. *See* Case No. 1:14-cv-00436, Dkt. No. 82 at 1 n.2. Bandspeed’s deadline to file a notice of appeal is October 4, 2016. *See* 35 U.S.C. § 142. If Bandspeed does not appeal the PTAB’s final written decision, construction of the following disputed claim terms will be unnecessary, because the claims in which the terms are found have been invalidated:

- “default channel register” (claims 1, 3, 6, 8, 11, and 13);
- “good channel” (claims 1, 2, 6, 7, 11, and 12);
- “bad channel” (claims 1, 6, and 11);
- “loading a set of default channels into a default channel register” (claims 6 and 11); and
- “loading a set of good channels into a good channel register” (claims 6 and 11).

IPR2016-00620, IPR2016-00623 (challenging the ’500 patent)

On August 24, 2016, the PTAB instituted review of claims 1-5, 8-20, and 23-31, but did not institute on claims 6, 7, 21, and 22. Ex. E at 2; Ex. F at 2. The PTAB provisionally construed the term “default hopping sequence,” which is disputed in this case. Ex. E at 14-15.

<b>Bandspeed’s Proposed Construction</b>	<b>Defendants’ Proposed Construction</b>	<b>PTAB’s Construction<sup>1</sup></b>
Plain and ordinary meaning or “a selected hopping sequence adopted when no alternative is specified”	“an original hopping sequence that does not change based on channel performance”	“a preset hopping sequence that does not change based on channel performance, including, but not limited to, an original hopping sequence.”

<sup>1</sup> The PTAB construes claims under the “broadest reasonable interpretation” standard, *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144-45 (2016), while district courts apply the narrower “ordinary and customary meaning” standard, *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc).

The PTAB will likely issue final written decisions no later than August 24, 2017. *See* 35 U.S.C. § 316(a)(11).

95/000,647 ('614 patent)

The USPTO has issued a final rejection of all asserted claims (claims 8, 36, 89, 93, and 94). Bandspeed has amended claim 8, which also stands rejected. Bandspeed filed its appeal brief on January 25, 2016.

95/000,648 ('418 patent)

The USPTO has issued a final rejection of all asserted claims (claims 2, 6, 10, and 88). Bandspeed has amended claims 2, 6, and 10, and has amended claim 85 from which claim 88 depends, all of which also stand rejected. Bandspeed filed its appeal brief on May 12, 2016.

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Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on September 21, 2016, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

/s/ James G. Warriner